2 geoff.howard@bingham.com Thomas S. Hixson (SBN 193033) 3 thomas.hixson@bingham.com Kyle Zipes (SBN 251814) 4 kyle.zipes@bingham.com Three Embarcadero Center San Francisco, California 94111-4067 Telephone: 415.393.2000 6 Facsimile: 415.393.2286 7 ORACLE CORPORATION Dorian Daley (SBN 129049) 8 dorian.daley@oracle.com Deborah K. Miller (SBN 95527) deborah.miller@oracle.com 500 Oracle Parkway MVS 50p7 Redwood City, CA 94065 Telephone: 650.506.4846 Facsimile: 650.506.7114 ORACLE CORPORATION Jeffrey S. Ross (SBN 138172) jeff.ross@oracle.com 10 Van de Graaff Drive Burlington, MA 01803 Telephone: 781.744.0449 Facsimile: 781.238.6273 Attorneys for Plaintiff ORACLE AMERICA, INC. WINTED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION ORACLE AMERICA, INC., a Delaware corporation, Plaintiff, V. SERVICE KEY, LLC, a Georgia limited liability company: ANGELA VINES; DLT FEDERAL BUSINESS SYSTEMS CORPORATION, a Delaware corporation; and DOES 1-50, Defendants.	1	BINGHAM MCCUTCHEN LLP	
Thomas S. Hixson (SBN 193033) thomas hixson@bingham.com	2	Geoffrey M. Howard (SBN 157468)	
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Kyle Zipes (SBN 251814) kyle zipes @bingham.com Three Embarcadero Center San Francisco, California 94111-4067 Telephone: 415.393.2000 Facsimile: 415.393.20286 Facsimile: 415.393.2286 Facsimile: 415.393.2386 F	3		
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v. 23 v. 24 SERVICE KEY, LLC, a Georgia limited liability company; ANGELA VINES; DLT 25 FEDERAL BUSINESS SYSTEMS CORPORATION, a Delaware corporation; and DOES 1-50, 26 Defendants. ITS MOTION TO STRIKE DEFENDANT DLT-FBS'S COUNTERCLAIMS AND AFFIRMATIVE DEFENSE Date: April 16, 2013 Time: 1:00 p.m. Place: Courtroom 1, 4th Floor Judge: Hon. Saundra B. Armstrong		TD1 1 1100	
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liability company; ANGELA VINES; DLT FEDERAL BUSINESS SYSTEMS CORPORATION, a Delaware corporation; and DOES 1-50, Defendants. Date: April 16, 2013 Time: 1:00 p.m. Place: Courtroom 1, 4th Floor Judge: Hon. Saundra B. Armstrong	24	SERVICE KEY, LLC, a Georgia limited	
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DOES 1-50, Place: Courtroom 1, 4th Floor Judge: Hon. Saundra B. Armstrong Defendants.			
Defendants.	26	DOES 1-50,	Place: Courtroom 1, 4th Floor
	77	Defendents	Judge: Hon. Saundra B. Armstrong
28	27	Defendants.	
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1	This Court's Standing Order is clear: "The failure of the opposing party to file a	
2	memorandum of points and authorities in opposition to any motion shall constitute a consent to	
3	the granting of the motion." Here, Oracle filed its Motion to Strike DLT-FBS's untimely	
4	affirmative defenses and counterclaims on February 20, 2013. D.I. 158. DLT-FBS's opposition	
5	was due on March 6, 2013. On that afternoon, DLT-FBS's counsel asked Oracle for a two day	
6	extension to file its opposition due to a heavy snowstorm. See Exhibit A to the Declaration of	
7	Kyle Zipes (3/6/13 email from Whitticar to Hixson and Zipes). Oracle agreed to the request. Ex.	
8	B (3/7/13 email from Zipes to Whitticar). But despite this extension, DLT-FBS failed to file any	
9	opposition. Instead, its counsel filed a motion to withdraw. D.I. 163. This was the second time	
10	DLT-FBS's counsel have sought to withdraw in this action without good reason. See D.I. 117	
11	(Motion to Withdraw) and D.I. 131 (Order denying Motion to Withdraw). Regardless, DLT-	
12	FBS's counsel remain its counsel of record until and unless the Court grants its motion to	
13	withdraw, which it has not done, and they were aware of the deadline to oppose Oracle's motion.	
14	Accordingly, pursuant to the Court's Standing Order, DLT-FBS's failure to file any opposition	
15	should be considered consent to the granting of Oracle's motion.	
16	DATED: March 13, 2013	
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18	Bingham McCutchen LLP	
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20	By: /S/Thomas S. Hixson Thomas S. Hixson	
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22	Attorneys for Plaintiff ORACLE AMERICA, INC.	
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